

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[TX-126-6-7483; FRL- \_\_\_\_\_]

**Proposed Approval and Promulgation of Implementation Plans;  
Texas; Non-Road Large Spark-Ignition Engines; Accelerated  
Purchase of Tier2/Tier3 Non Road Compression-Ignition Equipment;  
Non-Road Construction Equipment Restriction; and Electrification  
of Airport Ground Support Equipment for the Dallas/Ft. Worth  
(DFW) Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve revisions to the Texas State Implementation Plan. This rule making covers four separate actions. We are proposing approval of:

- (1) a rule requiring that non-road large spark-ignition engines of 25 horsepower (hp) or larger in Ellis, Johnson, Kaufman, Parker, Rockwall, Denton, Collin, Tarrant, and Dallas counties of the Dallas-Ft. Worth consolidated metropolitan statistical area (DFW area) conform to requirements identical to Title 13 of the California Code of Regulations, Chapter 9;
- (2) a rule requiring accelerated purchase and operation of non-road compression-ignition fleet equipment within Collin, Denton, Tarrant, Dallas counties of the DFW area;

(3) a rule requiring limitation in the use of non-road construction equipment over 50 horsepower operating in Denton, Collin, Tarrant, and Dallas counties (the DFW ozone nonattainment area), to later in the day to reduce production of oxides of nitrogen (NO<sub>x</sub>) during the time conducive to ozone formation; and

(4) a rule requiring owners and operators of ground support equipment (GSE) at major airports in Denton, Collin, Tarrant and Dallas counties of the DFW area to reduce NO<sub>x</sub> emissions attributable to GSE or convert the GSE fleet to electric-powered ground support equipment.

These new rules will contribute to attainment of the ozone standard in the DFW area. The EPA is approving these revisions to the Texas SIP to regulate emissions of nitrogen dioxide in accordance with the requirements of the Federal Clean Air Act (the Act).

**DATES:** Written comments must be received on or before **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Diana Hinds, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214)665-7561.

**SUPPLEMENTARY INFORMATION:**

Throughout this document "we," "us," and "our" refers to EPA.

This document concerns control of air pollution of oxides of nitrogen for non-road equipment sources in the DFW area and the control measures for attainment demonstration purposes. For further information, please see the Technical Support Document (TSD) prepared for this action.

*What action are we taking?*

On April 30, 2000, the Governor of Texas submitted to EPA these four rule revisions (a requirement that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9; non-road construction equipment operating limitations; establishing accelerated purchase and operation of non-road compression-ignition fleet equipment in the DFW area; and conversion of airport ground support equipment from fossil fuel to electrical power) to the 30 TAC, Chapter 114, "Control of Air Pollution

From Motor Vehicles," as a revision to the SIP.

These new rules will contribute to attainment of the ozone standard in the DFW area. The EPA is proposing to approve these revisions to the Texas SIP to regulate emissions of nitrogen dioxide in accordance with the requirements of the Federal Clean Air Act (the Act).

For more information on the SIP revision, please refer to our TSD.

*What are the requirements of the April 30, 2000, Texas SIP for non-road large spark-ignition (LSI) engines?*

Non-road, LSI engines are primarily used to power industrial equipment such as forklifts, generators, pumps, compressors, aerial lifts, sweepers, and large lawn tractors. The engines are similar to automotive engines and can use similar automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

Texas developed a non-road LSI engine strategy in the DFW area which establishes emission requirements for non-road, LSI engines 25 hp and larger for model year 2004 and subsequent model-year engines, and all equipment and vehicles that use such engines, by requiring non-road LSI engines to meet emission limits equivalent to, and certified in, a manner identical to 13 California Code of Regulations 9.

Although emissions from non-road, LSI engines have not yet been regulated by EPA under section 209(e)(2) of the Act (EPA

proposed rules on December 7, 2000 at 65 FR 76797), the California Air Resources Board (CARB) has adopted exhaust emission standards for these engines. Section 209(e)(2)(A) of the Act authorizes EPA to approve California regulation of non-road engines other than those used in locomotives, construction and farm equipment. Section 209(e)(2)(B) of the Act allows another state to adopt requirements for non-road engines if such regulations are identical to California's requirements. EPA has promulgated regulations, codified at 40 CFR 85.1606, setting forth the criteria for adoption of California regulations regarding non-road vehicles and non-road engines. We are proposing that Texas has met the statutory and regulatory requirements for adoption of the California LSI program. *What are the requirements of the April 30, 2000, Texas SIP for accelerated purchase and operation of Tier 2/Tier 3 non-road compression-ignition fleet equipment?*

The adopted rules will require those in the DFW ozone nonattainment area who own or operate non-road equipment powered by compression-ignition engines 50 hp and up to meet the certain requirements regarding Tier 2 and Tier 3 emission standards. For more information on the Tier 2 and Tier 3 emission standards, see 40 CFR 89.112, "Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards." Specifically, the regulations we are proposing to approve contain the following requirements. For the portion of the fleet that is

50 hp up to 100 hp, the owner or operator must ensure that such equipment will consist of 100% Tier 2 non-road equipment by the end of the calendar year 2007. For the portion of the fleet that is 100 hp up to 750 hp, the owner or operator must ensure that such equipment consists of a minimum of 50% Tier 3 non-road equipment and the remainder of Tier 2 non-road equipment by the end of the calendar year 2007. Finally, for the portion of the fleet that is greater than 750 hp, the owner or operator must ensure that such equipment consists of 100% Tier 2 engines by the end of calendar year 2007. The equipment that does not meet these standards (or bring about equivalent emissions reductions) after the given time frame cannot be used in the four-county area. The requirements in the Texas rule can be met by retrofit of currently owned or newly purchased engines if the retrofits are certified by EPA to meet or exceed Tier 2 or Tier 3 standards. The State rules will have the effect of accelerating the turnover rate of compression-ignition engine, non-road equipment. The DFW attainment demonstration shows that emissions reductions at this chosen rate of turnover are necessary for the area to reach attainment. The Texas rule exempts non-road engines used in locomotives, underground mining equipment, marine application, aircraft, airport ground support equipment (GSE), equipment used solely for agricultural purposes, emergency equipment, and freezing weather equipment. Generally, the rules will affect diesel equipment 50 hp and larger used in

construction, general industrial, lawn and garden, utility, and material handling applications.

It should be noted that the State rules afford an owner/operator an alternative means of complying with this regulation. An emissions reduction plan under this measure must be submitted by May 31, 2002, and approved by the Executive Director and EPA by May 31, 2003.

*What are the requirements of the April 30, 2000, Texas SIP for restricting non-road construction equipment operating limitations?*

The purpose of this rule is to establish a restriction on the use of construction equipment (non-road, heavy-duty diesel equipment rated at 50 hp and greater) as an air pollution control strategy until after 10 o'clock a.m. As a result, production of ozone precursors will be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately reducing the peak level of ozone. The restrictions apply from June 1 through October 31. The Texas regulation allows operators to submit an alternate emissions reduction plan by May 31, 2002. The alternate plan would allow operation during the restricted hours, provided the plan achieves reductions of NOx that would result in ozone benefits equivalent to the underlying regulation.

*What are the requirements of the April 30, 2000, Texas SIP for conversion to electric-powered ground-support equipment?*

These rules require a reduction in NO<sub>x</sub> of up to 90% from the 1996 contributions attributable to airport GSE from the airports which have the most air carrier operations in Collin, Dallas, Denton, and Tarrant Counties. The reductions are to be phased-in according to the following schedule: 20% by December 31, 2003, or December 31 of the year the airport becomes subject to the requirements; 50% by December 31, 2004, or by December 31 of the second year after the airport becomes subject; and 90% by December 31, 2005, or December 31 of the third year after the airport becomes subject to the requirements. The Texas regulations allow flexibility in meeting the emission reduction requirements, including emission reduction measures applied to the GSE fleet or measures applied elsewhere in the nonattainment area so long as those measures satisfy State emission reduction crediting regulations. Further, the regulations allow a GSE owner or operator to submit documentation of 100% electrification of GSE vehicles for which electrification technology exists in lieu of developing the inventory, reduction targets, and emission reduction plan. The adopted rules are necessary for the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS.

Section 209(e) of the Act prohibits States and their political subdivisions from adopting or enforcing any standard or other requirement relating to the control of emissions from non-road engines or non-road equipment. However, a general



requirement that fleet operators achieve a specified level of NOx reductions is not an emissions standard or other requirement under section 209(e)(2) of the Act. The fact that the level of required reductions is quantified and is calculated based on the level of emissions generated by the GSE fleet in-use in a prior year does not change the conclusion that assigning a general emissions reductions obligation to a fleet operator does not amount to an emissions standard on non-road equipment.

Similarly, the compliance alternatives available to a fleet operator do not transform the general obligation to achieve a certain quantity of reductions into an emissions standard on non-road equipment. The fleet operator has several alternatives to show compliance with the reductions requirement. The alternative to obtain reductions from the GSE fleet itself does not mandate a specific emissions level that the equipment must achieve but instead provides the fleet operators flexibility in how they obtain the reductions, including allowing restrictions on use and operation of the equipment. The fact that the State has proposed to approve an agreement with at least one airline to meet the targeted reductions demonstrates the feasibility of achieving the reductions without total electrification of the GSE fleet.

For additional information concerning these rule revisions, please refer to our TSD.

*What areas in Texas will this action affect?*

The rule revisions we are proposing to approve affect the

DFW area. We have classified four counties in the DFW area as a serious ozone nonattainment area: Collin, Dallas, Denton, and Tarrant. In addition, Ellis, Johnson, Kaufman, Parker, and Rockwall counties are affected by the Non-Road Large Spark-Ignition Engines rule.

### **Proposed Action**

We are proposing approval of four rules: Non-Road Large Spark-Ignition Engines; Accelerated Purchase of Tier2/Tier3 Non Road Compression-Ignition Equipment; Non Road Construction Equipment Restriction; and Electrification of Airport Ground Support Equipment for the Dallas/Ft. Worth (DFW) Ozone Nonattainment Area.

### **Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of

section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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#### **List of Subjects in 40 CFR part 52**

Environmental Protection, Air Pollution Control,  
Hydrocarbons, Intergovernmental Relations, Motor Vehicle  
Pollution, Nitrogen Oxides, Ozone, Reporting and Record Keeping

Authority: 42 U.S.C. 7401 et seq.

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Dated:

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Gregg A. Cooke,  
Regional Administrator,  
Region 6.